IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I.T.A. No. 65 of 1999
Date of Decision: 19.9.2007
(Assessment year 1990-91)

Income -tax Officer, Ward No. 3, Phagwara

---Petitioner

Vs.

Sh. Som Dutt Proprietor

---Respondent

I.T.R.No. 173 of 1998
(Assessment year 1985-86)

M/s Ravi Engineering Corporation.

--Petitioner

Vs.

Commissioner of Income Tax, Ludhiana

--Respondent

Coram: Hon'ble Mr. Justice M.M.Kumar
Hon'ble Mr. Justice Ajay Kumar Mittal

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Present: Mr. Sanjiv Bansal, Advocate
for the revenue.

Mr. Rajiv Sharma, Advocate
for Mr. S.K.Mukhi, Advocate,
for the assessee.

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M.M.Kumar, J.

This order shall dispose of ITA No. 65 of 1999 filed by the revenue and ITR No. 173 of 1998 filed by the assessee-respondent. In both the cases the following common question of law has been raised:-

"Whether on facts and circumstances of the case, the

> Hon'ble Income Tax Appellate Tribunal is right in holding that the payments made to Ludhiana Foundary Small Industries Association Regd. Are to be disallowed u/s 40A(3) particularly when the identity of the party and genuineness of the transactions stands established."

The brief facts of the case may first be noticed which are being referred from ITR No. 173 of 1998. The Assessing Officer made addition of Rs. 98,460/- under Section 40A(3) of the Income Tax Act. The assessee filed an appeal before the Appellate Assistant Commissioner and the addition made by the Assessing Officer were deleted. The operative part of the order dated 29.4.1991 is as under:-

> I have considered the submissions of the AR and find that before the ITO the appellant has filed a certificate from M/S Ludhiana Foundry & Small Industries Association (Regd.) to the fact that the cash payments were insisted by the Association and the appellant also filed receipts for payments of the amounts. Similarly receipts have been filed before me also and I find that it is a case where the appellant has produced sufficient evidence (including identity of the payee) before the ITO to suggest that the appellant was not having any alternative but to make the payment in cash. It is further seen that this is the first year of the business

and as the appellant was new to the above association, I am of the view that the ITO was not right in making the addition to the extent of the amount and therefore, the addition made by the ITO u/s 40A(3) is deleted.

In the result the set-aside appeal is allowed."

The revenue challenged the order of the Appellate Assistant Commissioner before the Tribunal which held that the instant case did not fall within the exceptions as contained in Rule 6DD(J) and circular No. dated 31.3.1977 issued in this regard. Accordingly, the addition made by the Appellate Assistant Commissioner was set aside. The assessee sought a reference under Section 256(1) which has been accepted by the Tribunal and the question has been referred for the opinion of this Court.

We have heard learned counsel at a considerable length and find that the controversy raised in both these cases is no longer res intergra. A Division Bench of this Court in the case of **Aggarwal Steel Traders Vs. Commissioner of Income -Tax and another** (2001) 250 ITR 738 has taken the view that if the assessee is able to furnish the confirmatory letter from the concerned parties with regard to the receipt of cash payments than the case of the assessee might be covered by the exceptional circumstances as provided in the Board Circular No. 220 dated 31.5.1977. The Division Bench has taken the similar view as taken by earlier Division Bench in **CIT Vs. Avtar Singh and Sons** (1992) 194 ITR 80.

When the facts of the present case are examined in the light of the aforementioned two judgments rendered by two Division Benches, we

find that the question has to be answered in favour of the assessee and against the revenue because the order of the Appellate Assistant Commissioner clearly shows that the assessee had filed a certificate from Ludhiana Foundry and Small Industries Association (Regd.) to the effect that cash payments were insisted by the Association. The assessee had also filed receipts of the payments of the amount before the Assessing Officer as well as before the Appellate Assistant Commissioner. The aforesaid evidence was recorded as sufficient to conclude that the assessee did not have any option but to make the payment in cash. It was further noticed that this was the first year of the assessee's business. It is also a relevant fact. The Tribunal has completely ignored this evidence which according to both the Division Bench judgments of this Court in case **Aggarwal Steel Traders' (supra)** and **CIT Vs. Avtar Singh and Sons (supra)** _ was required to be considered. Therefore, the question is liable to be answered in favour of the assessee and against the revenue.

In view of the above, we answer the question in favour of the assessee and against the revenue.

The connected appeal namely, ITA No. 65 of 1999 is also dismissed.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 19, 2007
paramjit